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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

S2 17 Cr. 548 (PAC)

5 JOSHUA ADAM SCHULTE,

6 Defendant.

Trial

7 -----x

New York, N.Y.  
8 July 22, 2021  
9 1:00 p.m.

Before:

10 HON. PAUL A. CROTTY,

District Judge  
11 -and a jury-

12 APPEARANCES

13 AUDREY STRAUSS

United States Attorney for the  
Southern District of New York

14 BY: MICHAEL D. LOCKARD

Assistant United States Attorney

15 SABRINA P. SHROFF

16 DEBORAH A. COLSON

Attorneys for Defendant

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(Case called)

THE COURT: The proceeding today is a continuation of the *Faretta* hearing we had last week on July 17. At last week's hearing, Mr. Schulte expressed his desire to proceed *pro se* in this case but conditioned his request on the fulfillment of certain conditions. Without these conditions being met, Mr. Schulte stated on the record that he would not be able to represent himself. That's on page 19 of the transcript. In light of these statements, I adjourned the conference for a week and directed the parties to meet and confer about possible accommodations with respect to Mr. Schulte's request. I reserved judgment on Mr. Schulte's motion to proceed *pro se*.

Mr. Lockard, can you bring us up to date on the parties' progress in the past week?

MR. LAROCHE: Yes, your Honor.

This morning, we filed a status letter to update the Court and counsel about our efforts to address and with the Metropolitan Correctional Center to address some of the issues Mr. Schulte raised, and that letter summarizes the updated status, including with respect to Mr. Schulte's access to his unclassified discovery on laptops and hard drives, his access to legal research time and his access to the SCIF.

THE COURT: And what about the printer.

MR. LAROCHE: And also with respect to the printer, MCC has stated that he can make requests of his unit manager --

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1 he's done that in the past -- and it will be provided to him,  
2 so he can do that.

3 THE COURT: Ms. Shroff.

4 MS. SHROFF: I don't have anything to add, your Honor.  
5 I think Mr. Schulte's ready with any further *Faretta* proceeding  
6 the Court may wish to conduct.

7 THE COURT: We have to swear you in, first, Mr.  
8 Schulte.

9 (Defendant sworn)

10 THE COURT: Mr. Schulte, just before you start, I want  
11 to find out if it's still your wish to proceed *pro se* in this  
12 matter. Under the law, I must advise you that your waiver of  
13 the right to counsel must be knowing, voluntary, and  
14 intelligent. It also must be unequivocal. Asserting your  
15 right to self-representation with conditions attached is not  
16 *per se* equivocal under the law, but I need your assurance that  
17 you are still willing to invoke your right to  
18 self-representation without having your conditions satisfied.

19 THE DEFENDANT: That's right.

20 THE COURT: Yes?

21 THE DEFENDANT: Yes.

22 THE COURT: You still want to proceed *pro se*.

23 THE DEFENDANT: That's right, yes.

24 THE COURT: Even though the conditions which you  
25 outlined before were not satisfactorily resolved?

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1 THE DEFENDANT: That's correct. I think after the --  
2 once you, once I'm *pro se*, then I think we can address some of  
3 the issues in the letter and work on things. If the Court  
4 wants motions filed for access and stuff like that, I can do  
5 that. But it has nothing to do -- it's not contingent upon  
6 anything.

7 THE COURT: Let me see if I understand. You want to  
8 represent yourself --

9 THE DEFENDANT: Right.

10 THE COURT: -- without regard to the conditions we  
11 talked about last week.

12 THE DEFENDANT: Yes, that's correct.

13 THE COURT: So your access to unclassified discovery,  
14 your access to legal research, the hours of the SCIF, you're  
15 willing to abide by whatever happens in those areas?

16 THE DEFENDANT: Yes, that's correct. If you want  
17 motions filed for certain accesses or just to work with the  
18 government to resolve these issues, that's what will happen.

19 THE COURT: And what if the issues aren't resolved,  
20 Mr. Schulte?

21 THE DEFENDANT: There's no contingency upon -- I want  
22 to go *pro se* regardless of the outcome.

23 THE COURT: All right.

24 Anybody else have anything to say? Is there any doubt  
25 about Mr. Schulte's competence?

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Ms. Shroff.

MS. SHROFF: Your Honor, may I just have a second with Ms. Colson.

THE COURT: Yes.

MS. SHROFF: No, your Honor. It is our considered judgment that any evaluation of Mr. Schulte would say that he's competent.

THE COURT: All right.

Mr. Lockard, are you of the same view?

MR. LAROCHE: No concerns about competency, your Honor.

THE COURT: All right. As I told you last week, I'm going to give you until a date to make any submissions that you want. They have to be submitted by the close of business on Friday, July 23, and I'll have a ruling on the *Faretta* issue on Monday, July 26.

Anything else to do today?

THE DEFENDANT: Is there a way to address a couple of these things as well?

(Counsel conferred with defendant)

THE DEFENDANT: From the government's letter, I wasn't able to respond to some of the issues, and I was hoping to bring some of those to light. And then a couple of other issues, such as mail, mail delay, which is pertinent in this case that I'm able to receive mail from the Court, and I've

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1 been unable to do so, and I wanted to raise some issues about  
2 the mail as well.

3 THE COURT: Well, I suggest that rather than doing it  
4 now, Mr. Schulte, you do it in the form of a motion so the  
5 government can respond to it. You have a problem with the  
6 mail?

7 THE DEFENDANT: Yeah. I brought several pieces of  
8 mail, but essentially, letters from this Court or from the  
9 government takes about three months. MCC, when they receive  
10 the letter, they mark it when they receive it and then they  
11 hold on to it for three months, and then they give it to me.  
12 So for example, issues in the Court of Appeals and other -- and  
13 issues in this Court, if you make rulings I won't know about it  
14 for three months, and it makes things very difficult. So even  
15 if I'm able to file motions, I won't know when the government  
16 responds so I won't have a chance to file replies.

17 It will affect the whole case going forward. So  
18 that's why I was hoping to address it now in open court,  
19 before, because I don't think I will have a chance in the  
20 motions to do so.

21 THE COURT: All right. What else do you have?

22 THE DEFENDANT: Did you want me to respond to the  
23 government's letter, or do you want me to discuss each of the  
24 points now with that? How do you want to proceed with that?

25 THE COURT: I prefer you proceed in writing.

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1 THE DEFENDANT: OK. So just to respond to the  
2 government's letter with those issues.

3 OK. Then the only, the only other thing I wanted to  
4 request was an electronic copy of the docket so that I can have  
5 and review the filings in this case.

6 Do you want me to request that --

7 THE COURT: Yes, please.

8 THE DEFENDANT: -- to the government too?

9 THE COURT: Yes.

10 THE DEFENDANT: OK. Then the only other issue is the  
11 mail delay. I have mail both from my attorneys, from the  
12 court, this Court, Court of Appeals, from the government, all  
13 indicating delays varying from three weeks to three months.  
14 And I don't know how this should be resolved or if you wanted  
15 to review the mail I have. But I was hoping to -- I don't  
16 know -- order the MCC to deliver the mail promptly, or -- what  
17 they usually do, if it's supposed to be from my attorney, they  
18 log it in the book so you can see the times. But the other  
19 mail from the courts, they don't do that, but I have the unit  
20 manager mark on it when he delivers it to me so you can see the  
21 time difference. But I don't know what this Court wants to do  
22 about the issue.

23 THE COURT: I want you to make a motion saying that  
24 you want the mail delivered on time, serve the motion on the  
25 government, and we'll get a response from the government and

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1 rule as we go along.

2 THE DEFENDANT: OK. But how -- if I can't receive  
3 mail, I won't know when they reply -- when they respond, and I  
4 won't be able to reply. Is there a way I can get personal  
5 service from the government for their responses? If I'm going  
6 to be in the SCIF Tuesdays and Thursdays, the government knows  
7 where I would be. They could -- if they could deliver the --

8 THE COURT: Mr. Lockard.

9 Excuse me.

10 MR. LAROCHE: Your Honor, we can discuss this issue  
11 with legal counsel at MCC. We may be able to send a courtesy  
12 copy to legal counsel and get it to Mr. Schulte that way. I  
13 don't know that we can get him materials -- I don't think the  
14 marshals will allow him to take materials back with him. But  
15 what I can say is that we'll work to address this issue so that  
16 the defendant gets timely access to anything that's filed with  
17 the Court.

18 THE COURT: All right.

19 THE DEFENDANT: OK.

20 THE COURT: Let me give you one more word of caution  
21 here, Mr. Schulte. The fact of the matter is that a  
22 professional attorney would not face the problems you're facing  
23 because you're incarcerated. And we can try to modify those  
24 conditions as we go along, but the fact of the matter is that  
25 you're always going to be at a deficit vis-à-vis retained or



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1 appointed counsel, who does not carry the burden of being  
2 incarcerated. And you are incarcerated. That causes certain  
3 problems in the preparation. If you want to represent  
4 yourself, that's fine. But you can't modify all of the  
5 conditions that are inhibiting you right now.

6 THE DEFENDANT: I mean I guess we will address all the  
7 issues in motions --

8 THE COURT: Yes.

9 THE DEFENDANT: -- to the court, so that's what I'm  
10 hoping to do, is to be able to address -- I mean I expect --  
11 I'm incarcerated as a pretrial detainee, so I don't expect that  
12 just because someone is incarcerated pretrial, that therefore  
13 they don't have a right to self-representation. So I'm hoping  
14 that the Court --

15 THE COURT: No, no. You're entitled to your right of  
16 self-representation. That's clear. But the fact of the matter  
17 is acting as your self-representative, because you're  
18 incarcerated, you bear certain burdens that do not burden  
19 retained counsel and appointed counsel. That's the only point.

20 THE DEFENDANT: Right.

21 THE COURT: Is there anything else? If anybody has  
22 any further views, they can submit them by the close of  
23 business on Friday. I'll have an order for you on Monday.

24 Thank you very much.

25 (Adjourned)